

APPENDIX

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Sections 811(c) and 811(d).

The following are the federal estate tax "transfer" sections of the Internal Revenue Code of 1939 (26 U.S.C. 811(c), (d) (1952 ed.)):

"§811. Gross estate.

"The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

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"(c) Transfers in contemplation of, or taking effect at, death.

"(1) General rule.

"To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

(A) in contemplation of his death; or

(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; or

(C) intended to take effect in possession or enjoyment at or after his death.

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“(2) Transfers taking effect at death—transfers prior to October 8, 1949.

“An interest in property of which the decedent made a transfer, on or before October 7, 1949, intended to take effect in possession or enjoyment at or after his death shall not be included in his gross estate under paragraph (1) (C) of this subsection unless the decedent has retained a reversionary interest in the property, arising by the express terms of the instrument of transfer and not by operation of law, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 per centum of the value of such property. For the purposes of this paragraph, the term ‘reversionary interest’ includes a possibility that property transferred by the decedent (A) may return to him or his estate, or (B) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent’s death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Commissioner with the approval of the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate.

“(3) Transfers taking effect at death—transfers after October 7, 1949.

“An interest in property transferred by the decedent after October 7, 1949, shall be included in his gross estate under paragraph (1) (C) of this subsection (whether or not the decedent retained any right or interest in the property transferred) if and only if—

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(A) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent; or

(B) under alternative contingencies provided by the terms of the transfer, possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the earlier to occur of (i) the decedent's death or (ii) some other event; and such other event did not in fact occur during the decedent's life.

Notwithstanding the foregoing sentence, an interest so transferred shall not be included in the decedent's gross estate under paragraph (1) (C) of this subsection if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a power of appointment (as defined in section 811 (f) (2)) which in fact was exercisable immediately prior to the decedent's death.

“(d) *Revocable transfers—(1) Transfers after June 22, 1936.*

“To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death;

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“(2) Transfers on or prior to June 22, 1936.

“To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph;

“(3) Date of existence of power.

“For the purposes of this subsection the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.”

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Section 641(a)(1).

The following is the section of the Internal Revenue Code of 1954 which subjects trusts to income tax on their accumulated income (26 U.S.C. 641(a)(1) (1964 ed.)):

“§ 641. *Imposition of tax.*

“(a) *Application of tax.*

“The taxes imposed by this chapter on individuals shall apply to the taxable income of estates or of any kind of property held in trust, including —

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust; . . . ”

Sections 1003(b)(3) and 2503(b).

The following are the sections of the Internal Revenue Code of 1939 and of the Internal Revenue Code of 1954 which grant \$3,000 annual exclusions from gift tax for present interest gifts (26 U.S.C. 1003(b)(3) (1952 ed.); 26 U.S.C. 2503(b) (1964 ed.)):

“§ 1003. *Net gifts*—(a) *General definition.*

“The term ‘net gifts’ means the total amount of gifts made during the calendar year, less the deductions provided in section 1004.

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“(b)(3) *Gifts after 1942.*

“In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1943 and subsequent calendar years, the first \$3,000 of such gifts to such

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person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year."

"§ 2503. *Taxable gifts.*

"(a) *General definition.*

"The term 'taxable gifts' means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (sec. 2521 and following).

"(b) *Exclusions from gifts.*

"In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first \$3,000 of such gifts to such persons shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person."